IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4985 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TRIVEDI AMTHALAL LALJIBHAI

Versus

THE COLLECTOR, BANASKANTHA

Appearance:

1. Special Civil Application No. 4985 of 2001

MR DILIP B RANA for Petitioner No. 1

Ms. Shraddha Trivedi, AGP for Respondent No. 1

Ms. A.H. Shah for MR MH RATHOD for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/12/2001

ORAL JUDGEMENT

Heard learned advocate Mr. D.B. Rana for the petitioner; Ms. Shraddha Trivedi, learned AGP for respondent No. 1 and Ms. Shah for Mr. Mehul Rathod for respondent No.2.

Rule, service of which is waived by Ms. Trivedi, learned AGP for respondent NO. 1 and Ms. Shah, learned advocate appearing for Mr. Rathod for respondent No.2. In the facts and circumstances of the case and also with the consent of the learned advocates for the respective

parties, the matter is taken up for final hearing today.

By way of this petition, the petitioner has challenged the impugned order dated 6.6.2001 whereby the respondent No.1 has cancelled the resolution No. 6/11 dated 19.8.2000 passed by the respondent No.2 has been favour of the petitioner. Learned advocate Mr. Rana appearing for the petitioner has submitted that the said resolution dated 19.8.2000 passed by the respondent No.2 in favour of the petitioner has been cancelled by the respondent No.1 without affording any opportunity of hearing whatsoever and, therefore, same is contrary to the principles of natural justice and is liable to be quashed and set aside on that ground alone. He has placed reliance on the decision of this court in case of Vasantilal Ramanlal Kansara versus Viramgam Municipality and others reported in 1995 (2) GLH 436 and has submitted that in the said decision also, beneficiary of the resolution passed by the Municipality concerned was not heard by the Collector before cancelling the resolution passed by the Municipality and, therefore, following the ratio of the decision in case of H.H. Parmar v. COllector, Rajkot and Another reported in 20(2) GLR, 97, the order passed by the Collector was set aside on that ground alone. According to him, in this case also, the beneficiary of the resolution passed by the Respondent No.2 has not been heard by the Collector before cancelling the resolution dated 19th August, 2000 whereby the beneficiary namely petitioner herein was promoted to the post of Overseer. He has submitted that as a result of the order dated 6th June, 2001 passed by the Collector, the petitioner has been reverted to the post of Technical Assistant and, therefore, the petitioner ought to have been heard by the respondent Collector before passing the order dated 6th June, 2001 and, therefore, this petition is required to be allowed by quashing and setting the said order dated 6th June, 2001 on that ground alone.

On the other hand, Ms. Trivedi, the learned AGP appearing for respondent No.1 Collector has submitted that the impugned order dated 6th June, 2001 was passed by the Collector in exercise of the powers under sec. 258 of the Gujarat Municipalities Act and under Sec. 258 of the Act, the only party which the Collector is bound to hear is the Municipality and, therefore, this Court should not entertain this petition.

Considering the submissions made by the learned advocates for the parties and also considering the averments made by the petitioner in the memo of petition,

I am of the view that it is clear that the petitioner who is the beneficiary of the resolution dated 19th August, 2000 was not heard by the COllector before cancelling the said resolution by order dated 6th June, 2001. In light of these facts, the observations made by this Court in case of Vasantilal Ramanlal Kansara (supra) are material. Following the ratio of the decision in case of H.H. Parmar v. COllector, Rajkot reported in 20(2) GLR 97, this Court has held as under :

"3. The only contention which was canvassed at the hearing of this petition was that though the Resolution of the Municipality which was passed in favour of the petitioner was set aside, the petitioner was not heard by the Collector in the matter.

5A. The aforesaid ratio of the decision of the learned Single Judge in special civil application no. 548 of 1972 is in clear conflict with the ratio of the decision of the Division Bench rendered in the case of H.H. Parmar (supra) which lays down that in the case where the benefit is given to a third party under the Resolution of the Municipality, it was incumbent on the part of the authority to give a reasonable opportunity of being heard to such a beneficiary. In this view of the matter, the decision of the learned Single Judge in Special Civil Application No. 548 of 1972 in the case of Pratapsing (supra) is no longer a good law.

6. As the petitioner was entitled to be heard before the Collector could make an order under section 258(1) of the said Act suspending the resolution under which the petitioner was a beneficiary, the impugned order of the Collector having been passed without hearing the petitioner cannot be sustained. The impugned order is, therefore, set aside and the Collector is directed to decide the matter afresh in accordance with law under section 258(1) of the Act after giving an opportunity of hearing to the petitioner. The Collector shall take a decision as expeditiously as possible. Rule is made absolute accordingly with no order as to costs."

Therefore, considering the decision of this Court in case of Vasantilal Ramanlal Kansara (supra), since the petitioner herein has also not been heard by the Collector before passing the order dated 6th June, 2001,

the order dated 6th June, 2001 passed by the Collector is required to be quashed and set aside on that ground alone with a liberty to the Collector to pass the appropriate order in accordance with law under section 258(1) of the Act after giving reasonable opportunity to the petitioner.

The impugned order dated 6th June, 2001 passed by respondent No. 1 Collector is, therefore, quashed and set aside and the Collector is directed to decide the matter afresh in accordance with law under section 258(1) of the Act after giving an opportunity of hearing to the petitioner. The Collector shall take a decision as expeditiously as possible but not later than three months from the date of receipt of copy of this order. Rule is made absolute accordingly with no order as to costs.

18.12.2001. (H.K. Rathod,J.)
Vyas